

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ORBIT ONE COMMUNICATIONS, INC., and  
DAVID RONSEN,

Plaintiffs/Counterclaim Defendants,

- against -

NUMEREX CORP.,

Defendant/Counterclaim Plaintiff.

**Civil Action No. 08-0905 (LAK) (JCF)**

NUMEREX CORP.,

Plaintiff/Counterclaim Defendant,

- against -

SCOTT ROSENZWEIG, GARY NADEN, and  
LAVA LAKE TECHNOLOGIES, LLC,

Defendants/Counterclaim Plaintiffs.

**Civil Action No. 08-6233 (LAK) (JCF)**

GARY NADEN, DAVID RONSEN, SCOTT  
ROSENZWEIG, ORBIT ONE  
COMMUNICATIONS, INC., and LAVA LAKE  
TECHNOLOGIES, LLC,

Plaintiffs/Counterclaim Defendants,

- against -

NUMEREX CORP.,

Defendant/Counterclaim Plaintiff.

**Civil Action No. 08-11195 (LAK) (JCF)**

**DECLARATION OF JOHN J.D.  
McFERRIN-CLANCY IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT**

Pursuant to 28 U.S.C. § 1746, JOHN J.D. McFERRIN-CLANCY, under penalty of perjury,  
hereby declares:

1. I am a member of Lowenstein Sandler PC ("Lowenstein"), counsel to Plaintiffs Orbit One Communications, Inc. ("Orbit") and David Ronsen (together with Orbit "Plaintiffs") in the above-captioned action. I make this declaration in support of Plaintiffs' motion for summary judgment in this matter.

2. Annexed as Exhibit 1 is a true and correct copy of the September 3, 2008 Declaration of David Ronsen.

3. Annexed as Exhibit 2 is a true and correct copy of Plaintiffs' Exhibit 188, June 2007 Project Big Sky Transaction Overview beginning at Bates number NUM00474988.

4. Annexed as Exhibit 3 is a true and correct copy of Plaintiffs' Exhibit 7, an e-mail dated May 3, 2007 from L. Fienberg to S. Nicolaides and A. Catherall beginning at bates number NUM667902.

5. Annexed as Exhibit 4 is a true and correct copy of Plaintiffs' Exhibit 185, the Axonn Contingency Plan dated May 18, 2007 beginning at Bates number ORBIT00022424.

6. Annexed as Exhibit 5 is a true and correct copy of Plaintiffs' Exhibit 12, an e-mail dated June 15, 2007 from G. Naden to L. Fienberg beginning at bates number ORBIT678615.

7. Annexed as Exhibit 6 is a true and correct copy of the relevant pages of the transcript of the April 13, 2009 Deposition of Louis Fienberg.

8. Annexed as Exhibit 7 is a true and correct copy of the relevant pages of the transcript of the February 12, 2009 Deposition of Alan Catherall.

9. Annexed as Exhibit 8 is a true and correct copy of the relevant pages transcript of the April 16, 2009 Deposition of Stratton Nicolaides.

10. Annexed as Exhibit 9 is a true and correct copy of a Plaintiffs' Exhibit 176 Numerex's July 9, 2008 Complaint.

11. Annexed as Exhibit 10 is a true and correct copy of Plaintiffs' Exhibit 184, an e-mail dated June 13, 2007 from Louis Fienberg to Gary Naden beginning at Bates number NUM00669753.

12. Annexed as Exhibit 11 is a true and correct copy of Plaintiffs' Exhibit 8, an e-mail dated June 22, 2007 from L. Fienberg to Michael Kent beginning at bates number NUM496017.

13. Annexed as Exhibit 12 is a true and correct copy of Defendant's Exhibit 41, a letter dated April 23, 2007 from M. Cunningham to D. Ronsen beginning at ORBIT756430.

14. Annexed as Exhibit 13 is a true and correct copy of relevant pages of the January 21, 2009 Deposition of David Ronsen.

15. Annexed as Exhibit 14 is a true and correct copy of relevant pages of the April 16, 2009 Deposition of Alan Catherall.

16. Annexed as Exhibit 15 is a true and correct copy of Plaintiffs' Exhibit 178, and e-mail dated April 22, 2007 from Louis Fienberg to Stratton Nicolaidis beginning at Bates number NUM00569315.

17. Annexed as Exhibit 16 is a true and correct copy of Plaintiffs' Exhibit 22, an e-mail dated May 7, 2007 from L. Fienberg to D. Ronsen beginning at NUM669751.

18. Annexed as Exhibit 17 is a true and correct copy of Defendant's Exhibit 43, an e-mail dated June 18, 2007 from P. DiBella to D. Ronsen beginning at Bates number ORBIT485296.

19. Annexed as Exhibit 18 is a true and correct copy of Plaintiffs' Exhibit 106, the November 2006 notes of Alan Catherall beginning at Bates number NUM700657.

20. Annexed as Exhibit 19 is a true and correct copy of the relevant pages of the transcript of the February 24, 2009 Deposition of Thomas B. Stoughton.

21. Annexed as Exhibit 20 is a true and correct copy of the relevant pages from the transcript of the February 25, 2008 Deposition of Paul DiBella.

22. Annexed as Exhibit 21 is a true and correct copy of Plaintiffs' Exhibit 13, record of telephonic meeting of the Board of Directors of Numerex Corp. beginning at Bates number NUM666240.

23. Annexed as Exhibit 22 is a true and correct copy of the relevant pages of the transcript of the January 26, 2009 Deposition of Andrew Ryan.

24. Annexed as Exhibit 23 is a true and correct copy of Plaintiffs' Exhibit 30, the Asset Purchase Agreement between Orbit One Communications, LLC and Orbit One Communication, Inc.

25. Annexed as Exhibit 24 is a true and correct copy of the relevant pages of the transcript of the January 20, 2009 Deposition of David Ronsen.

26. Annexed as Exhibit 25 is a true and correct copy of the relevant pages of the transcript of the February 4, 2009 Deposition of Michael Marett.

27. Annexed as Exhibit 26 is a true and correct copy of the relevant pages of the transcript of the January 22, 2009 Deposition of Gary Naden.

28. Annexed as Exhibit 27 is a true and correct copy of the relevant pages of the transcript of the January 23, 2009 Deposition of Scott Rosenzweig.

29. Annexed as Exhibit 28 is a true and correct copy of Plaintiffs' Exhibit 155, an e-mail dated August 2, 2007 from D. Ronsen to S. Rosenzweig beginning at Bates number NUM423611.

30. Annexed as Exhibit 29 is a true and correct copy of Plaintiffs' Exhibit 15, a letter dated August 23, 2007 from M. Cunningham to E. Malone beginning at Bates number NUM430329.

31. Annexed as Exhibit 30 is a true and correct copy of Defendant's Exhibit 31, an e-mail dated December 28, 2007 from D. Ronsen to S. Rosenzweig beginning at Bates number ORBIT34950.

32. Annexed as Exhibit 31 is a true and correct copy of Plaintiffs' Exhibit 66, an e-mail dated December 22, 2007 to M. Marett beginning at Bates number NUM00481053.

33. Annexed as Exhibit 32 is a true and correct copy of Plaintiffs' Exhibit 67, an e-mail dated December 23, 2007 from D. Ronsen to S. Rosenzweig beginning at Bates number NUM00423684.

34. Annexed as Exhibit 33 is a true and correct copy of Defendant's Exhibit 32 identified as Subcontract No.: TAV(b)00-07-001.

35. Annexed as Exhibit 34 is a true and correct copy of the relevant pages of the transcript of the January 27, 2009 Deposition of Stratton Nicolaides.

36. Annexed as Exhibit 35 is a true and correct copy of Plaintiffs' Exhibit 46, an October 5, 2007 letter from D. Ronsen to Numerex beginning at Bates number NUM105932.

37. Annexed as Exhibit 36 is a true and correct copy of Plaintiffs' Exhibit 78, a January 3, 2008 e-mail from M. Marett to A. Catherall beginning at Bates number NUM00670253.

38. Annexed as Exhibit 37 is a true and correct copy of Plaintiffs' Exhibit 79, an e-mail dated January 8, 2009 from M. Marett to S. Nicolaides beginning at Bates number NUM00515169.

39. Annexed as Exhibit 38 is a true and correct copy of the November 17, 2008 Declaration of David Ronsen in Support of Summary Judgment.

40. Annexed as Exhibit 39 is a true and correct copy of the Hon. Magistrate Judge Francis' October 31, 2008 Order in the instant action.

41. Annexed as Exhibit 40 is a true and correct copy of the Affidavit of Gary Naden in Support of Preliminary Injunction.

42. Annexed as Exhibit 41 is a true and correct copy of the Affidavit of Scott Rosenzweig in Support of Motion for Preliminary Injunction.

43. Annexed as Exhibit 42 is a true and correct copy of the January 7, 2009 Preliminary Injunction Hearing Transcript.

44. Annexed as Exhibit 43 is a true and correct copy of Plaintiffs' Exhibit 181, an e-mail dated May 3, 2007 from Gary Naden to David Ronsen and Louis Fienberg beginning at Bates number ORBIT00453741.

45. Annexed as Exhibit 44 is a true and correct copy of an April 17, 2008 letter from Andrew Ryan to me.

46. Annexed as Exhibit 45 is a true and correct copy of Numerex's March 17, 2008 10K filing.

47. Annexed as Exhibit 46 is a true and correct copy of Plaintiffs' Exhibit 64, an e-mail dated December 18, 2007 from L. Fienberg to S. Nicolaides beginning at Bates number NUM495275.

48. Annexed as Exhibit 47 is a true and correct copy of the Stratix Purchase Order beginning at Bates number NUM00430083.

49. Annexed as Exhibit 48 is a true and correct copy of December 27, 2007 e-mail from Alan Catherall to Louis Fienberg beginning at Bates number NUM00494421.

50. Annexed as Exhibit 49 is a true and correct copy of Plaintiffs' Exhibit 75, an e-mail dated January 8, 2008 from D. Ronsen to M. Marett beginning at Bates number NUM430972.

51. Annexed as Exhibit 50 is a true and correct copy of Plaintiffs' Exhibit 73 an e-mail dated January 6, 2008 from D. Ronsen to M. Marett beginning at Bates number NUM431023.

52. Annexed as Exhibit 51 is a true and correct copy of Plaintiffs' Exhibit 43 an e-mail dated October 1, 2007 from D. Ronsen to A. Catherall to S Nicolaides beginning at Bates number NUM86274.

53. Annexed as Exhibit 52 is a true and correct copy of Plaintiffs' Exhibit 33, a press release dated October 23, 2007 beginning at Bates number NUM129963.

54. Annexed as Exhibit 53 is a true and correct copy of the relevant pages of the February 26, 2009 Deposition of Louis Fienberg.

55. Annexed as Exhibit 54 is a true and correct copy of a letter dated July 25, 2006 from J. Sabol to M. Cunningham beginning at Bates number NUM00667923.

56. Annexed as Exhibit 55 is a true and correct copy of a letter dated July 25, 2006 from E. Malone to M. Cunningham beginning at Bates number NUM00667926.

57. Annexed as Exhibit 56 is a true and correct copy of a letter dated August 4, 2006 from M. Cunningham to J. Sabol beginning at Bates number NUM00667928.

58. Annexed as Exhibit 57 is a true and correct copy of an e-mail dated July 12, 2007 from S. Nicolaides to P. DiBella beginning at Bates number NUM00513804.

59. Annexed as Exhibit 58 is a true and correct copy of an e-mail dated July 24, 2007 from S. Nicolaides to P. DiBella beginning at Bates number NUM00474448.

60. Annexed as Exhibit 59 is a true and correct copy of a letter dated April 23, 2007 from M. Cunningham to D. Rosen beginning at Bates number ORBIT00456430.

61. Annexed as Exhibit 60 is true and correct copy of an e-mail dated November 20, 2007 from S. Rosenzweig to D. Rosen and G. Naden beginning at Bates number ORBIT00268017.

62. Annexed as Exhibit 61 is a true and correct copy of Numerex's January 30, 2009 Answers and Counterclaims in the above captioned matter.

63. Annexed as Exhibit 62 is a true and correct copy of Numerex's February 12, 2009 Rule 26 Disclosures in the above captioned matter.

64. Annexed as Exhibit 63 is a true and correct copy of the Hon. Judge Kaplan's Scheduling Order, dated May 2, 2008 regarding the above captioned matter.

65. I hereby certify that all of the foregoing statements made by me are true.

Dated: April 22, 2009  
New York, NY

//s// John J.D. McFerrin-Clancy  
John J.D. McFerrin-Clancy  
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